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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,920	08/28/2006	Andreas Basteck	WW042USU	1395

27623 7590 11/26/2008  
OHLANDT, GREELEY, RUGGIERO & PERLE, LLP  
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STAMFORD, CT 06901

EXAMINER
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LE, DAVID D

ART UNIT	PAPER NUMBER
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3655

MAIL DATE	DELIVERY MODE
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11/26/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/550,920	<b>Applicant(s)</b> BASTECK, ANDREAS	
	<b>Examiner</b> David D. Le	<b>Art Unit</b> 3655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 8-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09/28/05</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This is the first Office action on the merits of Application No. 10/550,920, filed on 28 August 2006. Claims 8-20 are pending.

### **Documents**

2. The following documents have been received and filed as part of the patent application:
  - Information Disclosure Statement, received on 09/28/05
  - Copy of Foreign Priority Document, received on 09/28/06
  - Declaration and Power of Attorney, received on 08/28/06

### ***Specification***

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because it contains legal phraseology, "means". Correction is required. See MPEP § 1826.

5. The use of the trademark "Trilok™" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. **Claims 9, 10 and 14-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 9 and 10:

- Claim 9 recites the limitations “a hydrodynamic Fottinger converter” and “a Trilok™ converter”. It is unclear which specific model of the hydrodynamic converter that the claimed limitations are referring to.

Claims 14-16:

- Claims 14-16 recite the limitation "the specific value". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 8-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent Application No. 0 635 639 A1 (hereinafter referred to as EU'639) in view of U. S. Patent No. 3,078,739 to H. Weinrich (hereinafter referred to as Weinrich).**

Claims 8-19:

**EU'639** (i.e., Figs. 1 and 2; column 5, line 11 – column 9, line 45) discloses a wind turbine transmission comprising:

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- A wind turbine blade (i.e., Fig. 1, element 6);
- A planetary transmission (i.e., Figs. 1 and 2, element 8);
- A hydrodynamic converter (i.e., Fig. 1, element 48); and
- An electric generator (i.e., Fig. 1, element 46).

*EU'639* lacks:

- Wherein the planetary transmission is a power-split transmission having a first power branch for driving the electric generator via the hydrodynamic converter at an output end of the power-split transmission, and a second power branch;
- Wherein the hydrodynamic converter controls power flow so that a speed at which the electric generator is driven is substantially constant;
- A second planetary transmission connected in series with the power-split transmission;
- Wherein the second planetary transmission is arranged in the second power branch and increases a speed at which the hydrodynamic converter is operated;
- Wherein the hydrodynamic converter includes a pump, a stator, and a turbine wheel;
- Wherein power input occurs via a planetary gear carrier;
- Wherein the first power branch is operably connected to a sun wheel;
- Wherein the second power branch provides feedback to a ring gear; and
- Wherein an output speed is held constant with a maximum deviation of  $\pm 10$ ,  $\pm 5$  or  $\pm 1$  of a specific value.

**Weinrich** (i.e., Fig. 1; column 3, line 49 – column 8, line 17), on the other hand, teaches a transmission comprising:

- A first planetary transmission (i.e., Fig. 1);
- A second planetary transmission (i.e., Fig. 1);
- A hydrodynamic converter (i.e., Fig. 1);
- Wherein the first planetary transmission is a power-split transmission having a first power branch (i.e., Fig. 1);
- Wherein the second planetary transmission is connected in series with the power-split transmission (i.e., Fig. 1);
- Wherein the second planetary transmission is arranged in a second power branch and increases a speed at which the hydrodynamic converter is operated;
- Wherein the hydrodynamic converter is capable of controlling power flow so that a speed at which the electric generator is driven is substantially constant;
- Wherein the hydrodynamic converter includes a pump (i.e., Fig. 1, element 108), a stator (i.e., Fig. 1, element 117), and a turbine wheel (i.e., Fig. 1, element 110);
- Wherein power input occurs via a planetary gear carrier (i.e., Fig. 1, element 102);
- Wherein the first power branch is operably connected to a sun wheel (i.e., Fig. 1, element 106);
- Wherein the second power branch provides feedback to a ring gear (i.e., Fig. 1, elements 105 and 116).

Since all the claimed elements were known in the prior art, one skilled in the art could have substituted the transmission of EU'639 with the transmission of Weinrich as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

It would also have been obvious to one having ordinary skill in the art at the time the invention was made to optimize an output speed, such that it is held constant with a maximum deviation of  $\pm 10$ ,  $\pm 5$  or  $\pm 1$  of a specific value, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225



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USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 8-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 7,081,689. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-12 of U. S. Patent No. 7,081,689 fully encompass the subject matter of claims 8-20 of the instant application.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- G. E. Flinn (U. S. Patent No. 2,682,786) teaches a transmission, as shown in the Figure.

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- C. F. Voytech (U. S. Patent No. 2,260,846) teaches a transmission, as shown in the Figure.
- H. Fottinger (U. S. Patent No. 2,114,179) teaches a power transmission device, as shown in Figs. 1-3.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David D. Le whose telephone number is 571-272-7092. The examiner can normally be reached on Mon-Fri (0900-1730).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles A. Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David D. Le/  
Primary Examiner, Art Unit 3655  
11/23/2008

ddl

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